

August 1, 1935.

Honorable Frank Thomas,  
County Attorney,  
Bisbee, Arizona.

My dear Mr. Thomas:

Your letter of July 19, requesting an opinion from the Attorney General relative to the applicability of the minimum wage to the Cochise County Hospital, has been referred to me for reply.

As outlined in your letter, you are desirous of knowing whether or not "attendants to the County Institution are entitled to the minimum wage as fixed by the State." You further state, in your letter, that "An attendant is a person who brings food, makes up beds and otherwise assists the patients".

Section 1, Chapter 12, Laws of 1933, provides:

"Eight hours, and no more, shall constitute a lawful day's work for all persons DOING MANUAL OR MECHANICAL LABOR EMPLOYED BY OR ON BEHALF OF THE STATE, OR OF ANY OF ITS POLITICAL SUBDIVISIONS, \* \* \* \* \*. Not less than the minimum per diem wages fixed by the state highway commission for manual or mechanical labor performed for said commission or for contractors performing work under contract with said commission, shall be paid to persons doing manual or mechanical labor so employed by or on behalf of the state or of any of its political subdivisions."

It cannot be questioned that the minimum wage act is applicable to employees of a county of the state. State vs. Ankian, 31 Pac. (2d) 888. In my opinion the only question is, "Are there men doing manual labor within the meaning of the Act?"

In the case of Russel Flour & Feed Co. et al, vs. Walker, 298 Pac. 291, the Oklahoma Supreme Court approved of the definition of "manual labor" as stated by the Illinois Supreme Court in 69 N.E. 68. The Illinois Supreme Court defined "manual labor" as follows:

"The term 'manual labor', in its ordinary and usual meaning and acceptation, means labor performed by and with the hands or hand, and it implies the ability for such sustained exercise and use of the hands or hand

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at a labor as will enable a person thereby to earn or assist in earning a livelihood."

The term "laborer" was defined in the Oklahoma case, as follows:

"Whether an employee is a laborer \* \* \* is generally a question of fact, dependent upon whether his duties are mainly physical or mental." (citing 70 N.E. 28)

By reason of these definitions of the terms "manual labor" and "laborer" it is the opinion of the Attorney General that the persons in question are engaged in the performance of "manual labor" within the meaning of the Minimum Wage Act.

Whether or not the Highway Commission has fixed the minimum wage for this class of labor is a fact to be determined by your Board of Supervisors. If the commission has not fixed a minimum per diem wage, for this class of manual labor, your Board of Supervisors may pay these employees such wages as they may agree upon. (Anklam vs. State,  supra).

Very truly yours,

JOHN L. SULLIVAN,  
Attorney General.

ELMER C. COKER,  
Assistant.